

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 10653 of 2003

Between:

- 1 Smt. T. Pusphaleela, w/o Subbareddy
R/o Tentapalla Village, Sattenapalli Guntur District
- 2 M, Saidaiah S/o late Ramokotaiah
R/o Rentapalla Village, Sattenapalli Mandal, Guntur District
- 3 M. Subbarao s/o late ramakotaiah
R/o Tentapalla Village, Sattenapalli Guntur District

..... PETITIONER(S)

AND

- 1 The Dy. Superintendent of Police, Rural Division, Sattenapalli, Guntur District.
- 2 M. Ch. Satyanarayana, Sub- Inspector of Police,
Sattenapalli Rural Police Station, Sattenapalli
Guntur District
- 3 Sri Badugu Rafel. S/o Jeevaratnam
R/o Kakumanuvarithota, Guntur Guntur Dist
- 4 K. Sreenivasarao S/o Nageswara rao
R/o Rentapalla Vilalge, Sattenapalli mandal,
Guntur District

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st and 2nd respondents in registering the FIR in Crime No. 35/2003 for the alleged offences U/s. 468, 420 of IPC and Sec. 3 of SC. ST Act, 1989 as illegal, arbitrary and to set aside the same as the same was registered by the 1st and 2nd respondent with non-application of mind and for extraneous considerations.

For the Petitioner: MR.M.PRABHAKARA RAO, Advocate

For the Respondent No.1: G.P FOR HOME

For the Respondent No.2: Smt S.K.Ratna

For the Respondent No.3:MR.VENKATESWARLU POSANI

The Court made the following Order:

Questioning registration of FIR in Crime No.35 of 2003 for the offence punishable under Sections 468 and 420 IPC and Section 3 of SC and ST (Prevention of Atrocities) Act 1988 as illegal and arbitrary and to set aside the same the present writ petition has been filed by the petitioners who are shown as accused in the said crime.

The learned counsel for the petitioners contends that late M.Rama Kotaiah, the father of petitioners Nos.2 and 3, and 3rd respondent herein jointly purchased a house site in an extent of Ac. 0-27 cents for a valuable consideration under a registered sale deed bearing document No.2301/66 in the year 1966 and since then the father of petitioners 2 & 3 was in possession of the property and after his death petitioners 2 and 3 are in possession. During the lifetime of Rama Kotaiah he sold an extent of Ac.0-10 cents in favour of late Mastan Reddy, father of first petitioner herein under a registered sale deed bearing document No.892/70, dated 8-6-1970.

It is evident from the above sale deed that late Rama Kotaiah acquired the said property under a settlement from the 3rd respondent during the year 1970 and the 3rd respondent relinquished his rights over his alleged share of property. In view of the same, some disputes arose as regards the possession and title between the petitioners and the third respondent, and on a complaint made by the 3rd respondent a case was registered in Crime No.35 of 2003 against the petitioners under Sections 468, 420 I.P.C. and Section 3 of SC & ST (Prevention of Atrocities) Act,

1989, petitioners 2 and 3 were arrested and later they were enlarged on bail.

Opposing the same, second respondent filed a counter stating that on a complaint made by the 3rd respondent before Sattenapalli Police Station, a case in Cr.No.35 of 2003 was registered against the petitioners under Sections 468, 420 IPC and Section 3(1) of SC & ST (Prevention of Atrocities Act) and the matter was investigated. During the course of investigation, petitioners 2 and 3 were arrested, who were subsequently granted bail by this court in CrI.P.No.2317 of 2003, dated 11-6-03.

A reading of the complaint clearly discloses that the 3rd respondent never relinquished of his right to property, which he jointly purchased along with the father of petitioners 2 and 3. Later second and third petitioners constructed houses in their share of 13 $\frac{3}{4}$ cents. It is also stated that they occupied the site belonging to the third respondent and constructed houses in that site also. Later the 2nd and 3rd petitioners sold away 0-04 cents of land belonging to the complainant in favour of one Shaik Basha, which is evident from the Encumbrance Certificate obtained by him. As per Section 3 of SC and ST (Prevention of Atrocities) Act 1988 if any person who is not being a member of Scheduled Caste or Scheduled Tribe dispossess from his land or premises or interferes with the enjoyment of his rights over any land, premises or water is liable for punishment for the offence under the Act. In view of the fact that complaint discloses interference with the rights and enjoyment of the property owned and possessed by the 3rd respondent, it is too early to come to a conclusion that the allegations made thereunder are not correct since the complainant has relinquished his right in the property in favour of Rama Kotaiah who is joint owner of the property.

In view of the same, I do not find any legal infirmity in registering the crime by the police on the complaint made by the 3rd respondent and in proceeding with the investigation. The petitioners are at liberty to

produce all such documents to prove that no criminal offence is made out and it is purely a civil dispute, during the course of investigation. It is for the police to accept the same and file charge sheet before the concerned court for the alleged offences. Till the police inquire into the matter and file the charge sheet before the court, the petitioners should not be arrested for the offences under Section 3 of SC & ST (Prevention of Atrocities) Act.

With the above direction, the writ petition is disposed of. No costs.

24-6-2004

Rkk

Assistant Registrar

//True Copy//

Section Officer

To

- 1 The Dy. Superintendent of Police, Rural Division, Sattenapalli, Guntur District.
- 2 Two CCs to GP for Home, High Court of A.P., Hyderabad.
3. 2 CD copies.